



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0256]

RIN 1625-AA00

Safety Zone; Ad Club's 100th Anniversary Gala Fireworks Display, Boston Inner Harbor, Boston, MA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone within Sector Boston's Captain of the Port (COTP) Zone for a fireworks display on the navigable waters of Boston Harbor in the vicinity of the Fan Pier, Boston, MA. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with the fireworks display. Entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective from 8:30 p.m. until 10:30 p.m. on June 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part

of docket USCG-2013-0256. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" Box and click "SEARCH." Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

## A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive information regarding the date and scope of the event with sufficient time to solicit public comments before the start of the event. The sponsor was not aware of the requirements for submitting an application for a marine event, resulting in a late notification to the Coast Guard. The sponsor is unable to reschedule this event due to the Ad Club's 100th Anniversary Gala celebration being held at The Institute Of Contemporary Art in conjunction with the fireworks display. Due to the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and

other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), for the same reasons as above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because it is impracticable and contrary to the public interest. Any delay in the effective date of this rule would expose spectators, vessels and other property to the hazards associated with pyrotechnics used in the fireworks display.

#### B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C., 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

A fireworks display is scheduled to occur as part of the Ad Club's 100th Anniversary Gala celebration at The Institute of Contemporary Art. The COTP Boston has determined that fireworks displays in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. Establishing a safety zone around the location of this fireworks event will help

ensure the safety of spectators, vessels and other property and help minimize the associated risks.

### C. Discussion of Final Rule

This safety zone will encompass a 600-foot radius around the firework barge. The fireworks display will occur from approximately 9 p.m. until 10 p.m. on June 26, 2013. To ensure public safety, the safety zone will be enforced immediately before, during, and after the fireworks launch. If the event is cancelled, then the safety zone will not be enforced.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be in effect for approximately two hours during the evening. The Coast Guard expects minimal adverse impact to mariners from the activation of the zone; this zone is located on the outter edge of the Boston Main Ship Channel and vessels have sufficient room to transit around the safety zone; and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; and notification of the safety zone will be made to mariners through the local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended requires federal agencies to consider the potential impact of regulations on small entitles during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only two

hours on a single day during the late evening; vessels may transit in all portions of the affected waterway except for those areas covered by the safety zone and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's designated on-scene representative. Notification of the safety zone will be made to mariners through the Local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If you believe that this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "Significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of

Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0256 to read as follows:

§ 165.T01-0256 Safety Zone; Ad Club's 100th Anniversary Gala  
Fireworks Display, Boston Inner Harbor, Boston, MA.

(a) General. A temporary safety zone is established for  
the fireworks display as follows:

(1) Location. All navigable waters from surface to  
bottom, within a 600-foot radius of position 42°21'25" N,  
071°02'26" W. This position is located approximately 1000-  
feet off of the Fan Pier, Boston Inner Harbor, Boston, MA

(2) Definitions. For purposes of this section  
"Designated on-scene representative" is any Coast Guard  
commissioned, warrant, or petty officer who has been  
designated by the Captain of the Port Boston (COTP) to act  
on the COTP's behalf. The designated representative may be  
on an Official Patrol Vessel; Official Patrol Vessel may  
consist of any Coast Guard, Coast Guard Auxiliary, state,  
or local law enforcement vessels assigned or approved by  
the COTP or the designated on-scene representative may be  
on shore and will communicate with vessels via VHF-FM radio  
or loudhailer. In addition, members of the Coast Guard  
Auxiliary may be present to inform vessel operators of this  
regulation.

(3) Enforcement Period. This rule is effective and

will be enforced from 8:30 p.m. to 10:30 p.m. on June 26, 2013.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within the safety zone without the permission of the COTP or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

Dated: May 21, 2013.

J. C. O'Connor III  
Captain, U.S. Coast Guard  
Captain of the Port Boston

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